

17 APR 1997



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

PAPER NO.: 27

BRINKS, HOFER, GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

In Re Application of : DECISION ON PETITION
MICHAEL MC HALE, ET AL : UNDER 37 C.F.R. 1.181

Serial No.: 08/044,240 :
Filed: April 7, 1993 :
For: MULTI-PHASE SHEETED CHEWING GUM AND METHOD AND APPARATUS FOR
MAKING

This is a decision on the petition filed under 37 C.F.R. 1.181 on March 20, 1997, requesting entry of the Supplemental Reply Brief filed on December 16, 1996, in the above identified application.

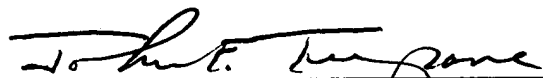
Applicants' provide the following arguments: (1) "while the examiner correctly states that the Supplemental Reply Brief addresses the issue of whether the specification supports certain characteristics of the claimed product, the examiner erred in determining that the Supplemental Reply Brief does not addresses new points of argument."; (2) "a cursory comparison of the briefs that were previously entered (Tabs 1-4) reveals that the arguments in the Examiner's Supplemental Answer are new points of arguments."; and (3) "the Petition for Entry of the Supplemental Reply Brief should be granted, and the Supplemental Reply should be entered." Applicants have also provided argument about what is purported to be three new points of argument raised by the examiner in his Supplemental Examiner's Answer.

Applicants' arguments have all been considered, but I do not find them convincing. Applicants' arguments that their Supplemental Reply Brief merely provides arguments which address new issues raised by the examiner for the first time in his Supplemental Examiner's Answer is not well taken. The purpose of a Reply Brief is to provide applicants with the opportunity to respond and not to continue prosecution of the application. Applicants' in their initial Appeal Brief, had essentially argued point 1 of their argument found on page 2 of this petition. This argument can be found on pages 16-20 of their Appeal Brief submitted February 26, 1996. Also, the examiner has in his initial supplemental Examiner's Answer merely responded to applicants' arguments.

The examiner, in responding to these arguments found in the Brief and Reply Brief, has provided applicants with a complete response to arguments presented by applicants.

Upon a thorough review of the positions of the applicants and the examiner, I find that the examiner acted properly to deny entry and consideration of the Supplemental Reply Brief in question. Accordingly, the petition is denied. The application is being forward to the Board of Patent Appeals and Interferences for a decision on the appeal.

The petition is DENIED.



John F. Terapane, Director
Patent Examining Group 1300
Specialized Chemical Industries
and Chemical Engineering

cdb:4/16/97